

**CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH, CHENNAI**

Original Application No. 310/00237 of 2014

Today, this the 6th day of July, 2016

CORAM:

THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

1. C. Someswaran,
B-4, Mahanthi Flats,
Old No. 52/New No.14,
Jubilee Road, W. Mambalam,
Chennai- 600 033;
2. V. Sethuraman,
New No.3/2, Old No. 2/2,
Vedachala Garden,
Mandaveli, Chennai- 28;
3. P.V. Subramanian,
Plot No.96, S & P Residency,
Rajankuppam, Vanagaram,
Chennai- 600 095;
4. K. Nagarajan,
A-1, Swati Flats, No.64,
Agastiar Street, East Tambaram,
Chennai- 600 059;
5. C. Srinivasan,
8/24, Abirami Towers, F.1,
Anjeneyar Koil Street,
East Tambaram, Chennai-59;
6. V. Krishnavelu,
7/214, Bharathi Nagar,
Kangayam Palayam P.O.,
Air Force Station, Sulur,
Coimbatore- 641 401;

7. K. Nagarajan,
No.11/9, Second Street, Periyar Nagar,
Vadavallil, Coimbatore- 641 041;
8. C.V. Ramasubramanian,
20(K), Asokar Street, Lakshmi Nagar,
Vallalore, Coimbatore- 641 111;
9. S. Devarajan,
No.4, Thirumalai Nagar, First Street,
Gobichettipalayam, Erode District;
10. S. Srinivasan,
135/C1, Premier Apartments,
Ammarandapam Road,
Srirangam, Trichy- 620 006;
11. V. Krishnamurthy,
No.34, Flat No.4, Balaji Harini,
Ram Nagar, 1st Street, North Extn.,
Valachery, Chennai- 600 042;
12. G.R. Bhasker Rao,
Sukha Nivas, Flat No.1,
New No. 24, Janakiraman Street,
West Mambalam, Chennai-33;
13. Lalitha Viswanathan,
2/47, APN Nagar, Selaiyur,
Tambaram East, Chennai- 600 073;
14. C. Krishnachand Idas,
170, Balaji Nagar, 7th Cross Street,
Selaiyur, Chennai- 600 073;
15. S. Narayanan,
Plot No.4 & 5, House No.B,
Srimathi Flats, Dr. Vasudevar Nagar Extn.,
Thiruvannmiyur, Chennai- 600 041;

16. Y. Issac,
No.71/48, Sriram Nagar,
100 feet Main Road,
Camp Road, Selaiyur Post,
Tambaram, Chennai- 600 073;
17. M. Natarajan,
No.15, Ramanathan Street,
Mahalingapuram, Chennai- 600 034;
18. S. Narayanan,
A-3, First Floor,
Ananthi Apartments,
33/17, Saalai Street Lane,
Mylapore, Chennai- 600 004;
19. R. Sridharan,
No. 22/A-30, HVF Estate,
Avadi, Chennai- 600 054;
20. R. Santhanam,
D-4, Iswarya Garden Extn.,
2nd Street, Medavakkam,
Chennai-600 100;
21. R. Doraiswamy,
Type IV 45/2, HVF Estate,
Avadi, Chennai- 600 054;
22. S. Muralidharan,
No.2, Mathurchaya II Street,
Thirumalai Nagar, Selaiyur,
Chennai- 600 073;
23. S. Ramaratnam,
No.62/1-C, Sree Raghavendra
Thillai Ganga Nagar 1st Main Road,
Nanganallur, Chennai-600 061;

24. P.V. Hari Haran,
C-203, Padma Keeran Enclave,
Trichy Road, Singanallur,
Coimbatore- 641 005;
25. N. Kirshnamurthy,
6/17, Sarojini II Street,
Rajaji Nagar, Jamin Pallavaram,
Chennai- 600 043;
26. D.S. Viswanathan,
A-4, Swathi Flats,
No.10, Pillayar Koil Street,
Rajaji Nagar, Thiruvanmiyur,
Chennai- 600 041;
27. S. Ramani,
ACDA, Accounts Office (Navy),
Fort St. George, Chennai-9;
28. Sharada V. Kumar,
Aishvarya Apartments,
31/A4, Srinivasa Avenue Road,
R.A. Puram, Chennai- 600 028;
29. K.M. Natha Ganesh,
C-262, Sri Durga Enclave,
16th Street, G.K.M . Colony,
Chennai- 600 082;
30. K.V. Seshadri,
No.25, Bhardwaj Street,
Avanti Flats S-5,
East Tambaram, Chennai- 600 059;
31. K.S. Raghavan,
30/5, Rams Kuppiyah Street,
West Mambalam, Chennai- 600 033.

.....Applicants

[by Advocate: M/s. L. Chandra Kumar]

Vs

1. Union of India rep. by
The Secretary, Ministry of Defence (Finance),
South Block, New Delhi- 110 011;
2. The Finance Secretary (Defence),
Ministry of Defence,
South Block, New Delhi- 110 011;
3. The Controller General of Defence Accounts,
West Block -V, R.K. Puram,
New Delhi- 110 066;
4. The Controller of Defence Accounts (Navy),
No.1, Co-operage Road,
Mumbai- 400 039;
5. The Principal Controller of Accounts,
(Factories), 10A- S.K. Bose Road,
Kolkata- 700 001;
6. The Contoller of Defence Accounts,
506, Anna Salai, Teynampet,
Chennai- 600 018;
7. Mr. L. Narahari,
To be served through
The Controller of Defence Accounts,
506, Anna Salai, Teynampet,
Chennai- 600 018.

.....Respondents

[by Advocate: Mr. M. Kishore Kumar]

Reserved on 17.06.2016

ORDER

Per: R. Ramanujam, M(A):-

The applicants' case is that while working as Assistant Accounts Officer during 1995, one of their juniors, L. Narahari was granted a higher pay fixation than that of the applicants. A large number of seniors at the all India level approached different Benches of this Tribunal claiming entitlement to stepping up of pay on par with the said Narahari. Satisfied with the merits of their case, different benches of the Tribunal as well as a Division Bench of the Hon'ble Madras High Court had directed the grant of stepping up of pay to the seniors. All these orders had been given effect to by the respondents. Similarly circumstanced persons who had approached this Bench in O.A. No. 260/2002 had also been granted relief by an order to step up their pay at par with the said Narahari at the level of Assistant Accounts Officer with effect from 3.07.1995 along with consequential benefits. The respondents' department filed W.P. No. 20774/2003 in the Hon'ble Madras High Court which affirmed the order of this Bench by order dated 27.11.2008. The SLP filed by the respondents thereon also came to be dismissed resulting in the applicants therein being extended the benefit of stepping up of pay. The applicants herein claim to be similarly circumstanced and, accordingly, seek the following reliefs:-

"to direct the official respondents to revise and fix the pay of the applicants on par with 7th respondent at the stage of Assistant Accounts Officer (AAO) w.e.f. 03.07.1995 and to consequently revise and re-fix the pension and other pensionary benefits arising out of such fixation forthwith in so far as the applicants are concerned on the basis of the orders of the Hon'ble Tribunal made in O.A. No. 260/2002 dated 13.11.2002 as confirmed by the Division Bench in W.P.No. 20774/2003 dated 27.11.2008."

2. The respondents resist the claim of the applicants on the ground that the said Narahari had been granted a special pay of Rs. 35/- per month for doing complex nature of work while on the lower post before promotion. Further, he had passed the Subordinate Accounts Service (SAS) Examination Part-II on 28.10.1986 but could not be promoted as Section Officer (Accounts) prior to 19.03.1990. He was therefore granted a special pay of Rs. 40/- per month with effect from 28.10.1986 which was raised to Rs. 70/- with effect from 28.10.1987. Consequent on introduction of functional grade in DAD with effect from 1.4.1987, he was promoted to Senior Auditor's Grade with effect from 1.4.1987 and Section Officer (A) with effect from 09.03.1990. Taking into account the emoluments of basic pay of Rs. 1950/- in Senior Auditors Grade and Special pay of Rs. 70/- for passing SAS Part-II examination, his pay was fixed at the stage of Rs. 2180/- with effect from 19.03.1990 and Rs. 2240/- with effect from 01.04.1990 i.e. from the date of accrual of next increment in the lower post. He was promoted as Assistant Accounts Officer (AAO) on 3.07.1995 and his pay was fixed at Rs. 2675/- in the pay scale of Rs.2000-3200. Subsequently his pay was upgraded to Rs.8300/- with effect from 01.07.1996 consequent on his electing the revised pay scale from the date of accrual of his next increment.

3. The applicants in the present O.A. were drawing less pay than Sri Narahari as on the date of fixation of pay in the AAO cadre on 03.07.1995 due to the fact that the latter was drawing higher pay on the lower post by virtue of his long service and the consequent pay fixation as per relevant F.Rs. As regards the situations mentioned in the O.A. wherein benefit of stepping up of pay was directed to be granted, it is pointed out by the respondents that the relevant orders were specifically applicable to the applicants/respondents in the respective O.A./W.P.s and the applicants cannot claim the dismissal of S.L.P. as a verdict in their favour as they were not part of it. The

applicants had waited for as long as 19 years before seeking remedy from this Tribunal as they wished to avoid complications knowing full well that they would have had to move out of their choice station of postings and perform complex functions in order to qualify for special pay attached to specific posts. They cannot, therefore, be allowed to enjoy the same benefit and rewarded in the same manner as a person who had volunteered for such a job.

4. Heard learned counsel on both sides and perused the documents as well as the citations.

5. Learned counsel for the applicant would place reliance on the order of the Bangalore Bench of this Tribunal in O.A. No. 670/1999, 831 and 832/1999 dated 10.11.2000 as upheld by the Hon'ble Karnataka High Court in its order dated 2.12.2004 granting relief of stepping up of pay to the applicants therein on par with the said Narahari. The Hon'ble High Court had observed that the Tribunal had examined the correctness of the order impugned in the O.A.s in the light of the Hon'ble Apex Court decision in the case of Union of India vs. Md. Harron Rashid and Others in Civil Appeal No. 1208/1992 dated 19.01.1995. It was noted that Junior Accountants were entitled to the higher or special pay and appointees to the posts carried the same till they were appointed to the next promotional post of Senior Accountant. The special pay was not granted to them in lieu of promotion for having stagnated in the lower post or grade but was a kind of an intermediate level of post/grade. Hence, when the employees carrying such special pay were thereafter promoted to the next higher post of Senior Accountant, their salary had to be fixed according to FR 22C. The Hon'ble Apex Court had in the said case held that the 10 percent posts earmarked for special pay had to be filled on the basis of seniority cum merit and there was nothing on record to show that the individuals concerned were overlooked for want of merit.

6. Learned counsel for the applicant also sought to rely on the order of this Bench in O.A. No. 260/2002 dated 13.11.2002 as upheld by the Hon'ble Madras High Court in W.P.20774/2003 dated 27.11.2008. The Hon'ble High Court while dismissing the Writ Petition had observed as follows:-


"Keeping in view the order passed by the Karnataka High Court dated 02.12.2004 in W.P. Nos. 5525/2001 and batch and the reasoned order passed by the Tribunal after taking into consideration the relevant materials, we do not find any reason to interfere with the order passed by the Tribunal. The writ petition is accordingly dismissed. No costs."

The SLP filed against the said order also having been dismissed by the Hon'ble Apex Court, the point of law has been settled in favour of the applicants therein as well as all similarly circumstanced persons, it was contended.

7. Learned counsel for the respondents, however, pointed out that in terms of the order passed by the Hon'ble Apex Court in the SLPs, the question of law was still open. He referred to the order of the Hon'ble Kerala High Court in OP. (CAT).No. 446 of 2012 (Z) dated 09.07.2015 in a more recent similar case. Attention was drawn to the following extracts from the judgment.

"21.xxxxxx xxxxxx xxxxxx. After going through the verdicts passed by the Bangalore Bench and Chennai Bench of the CAT and also on going through the verdicts passed by the concerned High Courts, this Court finds that the 'eligibility' to have the benefit of 'stepping up' as envisaged under the relevant provisions of law, with reference to the relevant O.M. and the binding precedents has not been considered in all these cases. Verdicts were being passed by the concerned CATs., merely with reference to the earlier instance of granting benefit to others. It is in the said circumstances that, the matter necessitated consideration on merits, by virtue of the liberty granted by the Apex Court.

22.The learned Asst. Solicitor General submits that, for stepping up the pay, discrepancy has to be with




reference to the two ingredients/circumstances, as mentioned in Clause (C) of FR 22-C and that the said requirement has not been satisfied by the applicants in the O.A. The fact remains that the 35th respondent by name Narahari was promoted to the post of S.G.A. which is stated as an intermediary cadre, carrying a different scale of pay, at earlier point of time and he was drawing higher salary, as conceded by the party respondents. This is discernible from the materials produced along with Annexure A4; which has been extracted already. It is also relevant to note that, granting of promotion to Mr. Narahari in the intermediary scale as mentioned above and granting of 'special pay' by virtue of the complexity/nature of work and fixation given at a higher level, also by virtue of the longer tenure considering the total service, was never subjected to challenge by the applicants in the O.A. or any of the seniors who approached the CAT Bangalore or CAT Chennai. This being the position, we need not go into the eligibility of the 35th respondent (Mr. Narahari) to have obtained the promotion and higher pay in the post, in so far there is no dispute with regard to the fact that he was given such promotion and higher pay both in the 'junior level' as well as in the 'senior level'. This Court finds that the same cannot be cited as an instance to extend similar benefit to the applicants in the O.A.

24. It is to be noted that the applicants in the O.A. had approached the C.A.T. Ernakulam, admittedly about 10 years after passing the verdicts by the concerned Tribunal/High Court in Bangalore/Chennai. The O.A. was liable to be dismissed on this score alone, more so, in the light of the law declared by the Apex Court in Rabindranath Bose Vs. Union of India and Ors. [AIR 1970 SC 470] holding that no interference shall be made in cases involving stale cause of action. It is also settled law that mistake cannot be perpetuated merely for the reason that the somebody else is given the benefit, unless the right is established, as held by the Apex Court Chandigarh Administration and Another vs. Jagjit Singh and another [AIR 1995 SC 705] and in Gurusharan Singh and Ors. Vs. New Delhi Municipal Committee and Ors. [(1996) 2 SCC 459]

25. After hearing both the sides and after considering the relevant provisions of law, this Court finds that the Tribunal was not justified in having extended the benefit without any regard to the legal provision. The applicants in the O.A. are not entitled to have the benefit. Accordingly, the orders passed by the Tribunal by way of Ext. P3 is set aside and O.A. No. 954 of 2010 filed before the CAT, Ernakulam stands dismissed. The Original petition filed by the petitioners is allowed. No costs."

8. Learned counsel would further draw attention to the order of the Principal Bench of this Tribunal dated 15.09.2015 in O.A. No. 3918 and O.A. No. 4212/2013 wherein the applicability of all the aforesaid citations have been adequately discussed and it has been held that the case of the applicants therein was not covered by FR22 and O.M. dated 4.11.1993. It has also been held that the order of the Hon'ble High Courts of Karnataka and Madras would be restricted to the petitioners only in those cases. It is also evident that while dismissing the SLP against the order of Karnataka High Court in W.P. Nos 5523/2001, 6240/2001 and 6241/2001, the Hon'ble High Court had made it clear that the question of law shall remain open. In view of this, the O.A. filed by the applicants is misconceived and the relief sought cannot be granted especially in the light of the unexplained delay of 19 years in filing the O.A.s.

9. I have carefully considered the matter in the light of the facts of the case as well as the citations. It is seen that while allowing the W.P. filed by the respondents, the Hon'ble Kerala High Court had dealt with the effect of the orders passed by the Bangalore Bench of this Tribunal, Hon'ble Karnataka High Court, order passed by this Bench and the dismissal of W.P. thereagainst by the Hon'ble Madras High Court. As the matter regarding point of law had been left open by the Hon'ble Apex Court and subsequent judicial verdicts have gone against the applicants concerned based on a clearer appraisal of facts, I am inclined to rely on the observations of the Hon'ble Kerala High Court



including on the issue regarding the delay in seeking relief. In the facts and circumstances of the case, the action of the respondents in treating the relief granted earlier to the applicants in the various O.A.s as personal to them and deciding that the benefit of the same could not be extended to the applicants herein for reason of delay as well as the fact that the point of law had not been settled in their favour cannot be faulted. The O.A. is accordingly dismissed. There shall be no order as to costs.